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12 OCT -9 PM 3:13

CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *WJW*

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GERALD LEE MILLER,
CDCR #C-92075,

Plaintiff,

vs.

L.S. McEWEN; G.J. JANDA; R.
LIZARRAGA; DR. RICHARD
KORNBLUTH; PARAMO; H. AMEZCUA;
S. HARDMAN; ALVAREZ; T. ALVAREZ;
B. DOMINGUES; C. VILLALOBOS;
A. CASTRO; J. FLORES; M. VITELA;
ZAMORA,

Defendants.

Civil No. 12cv1481 BEN (WVG)

**ORDER DISMISSING CIVIL
ACTION AS FRIVOLOUS
PURSUANT TO 28 U.S.C.
§ 1915A(b)(1) AND DENYING
MOTION TO PROCEED
IN FORMA PAUPERIS
AS MOOT**

(ECF No. 4)

Gerald Lee Miller ("Plaintiff"), currently incarcerated at Kern Valley State Prison located in Delano, California, and proceeding pro se, has filed this action pursuant to 42 U.S.C. § 1983. In addition, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) (ECF No. 4).

I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)

As amended by The Prison Litigation Reform Act, 28 U.S.C. § 1915A obligates the Court to review complaints filed by anyone "incarcerated or detained in any facility who is accused of,

1 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions
 2 of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after
 3 docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP.
 4 See 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any
 5 portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may
 6 be granted. 28 U.S.C. § 1915A(b); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010).

7 Plaintiff’s Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C.
 8 § 1915A(b)(1) because it is duplicative of a Complaint he has already filed in another civil
 9 action. Indeed, Plaintiff’s Complaint contains identical allegations against the same defendants
 10 already brought before and considered by United States District Judge Janis Sammartino in
 11 *Miller v. McEwen, et al.*, S.D. Cal. Civil Case No. 11cv2333 JLS (WVG). A court ““may take
 12 notice of proceedings in other courts, both within and without the federal judicial system, if
 13 those proceedings have a direct relation to matters at issue.”” *Bias v. Moynihan*, 508 F.3d 1212,
 14 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

15 A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it
 16 “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103,
 17 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal
 18 quotations omitted). Thus, because Plaintiff has already filed the same Complaint he has filed
 19 in this action in *Miller v. McEwen, et al.*, S.D. Cal. Civil Case No. 11cv2333 JLS (WVG), the
 20 Court hereby DISMISSES S.D. Cal. Civil Case No. 12cv1481 BEN (WVG) pursuant to 28
 21 U.S.C. § 1915A(b)(1). See *Cato*, 70 F.3d at 1105 n.2; *Rhodes*, 621 F.3d at 1004.

22 **II. Conclusion and Order**

23 Good cause appearing, **IT IS HEREBY ORDERED** that:

24 (1) Plaintiff’s Complaint in Civil Case No. 12cv1481 BEN (WVG) is **DISMISSED**
 25 as frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

26 (2) Plaintiff’s Motion to Proceed IFP (ECF No. 4) is **DENIED** as moot.

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1 (3) This Court CERTIFIES that no IFP appeal from this Order could be taken "in good
2 faith" pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438, 445
3 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is permitted to
4 proceed IFP on appeal only if appeal would not be frivolous).

5 The Clerk shall close the file.

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7 DATED: 10/9/2012


8 HON. ROGER T. BENITEZ
United States District Judge
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